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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TRACY L., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	G038409 (Super. Ct. Nos. DP013708, DP013709 & DP013710) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge orders of the Superior Court of Orange County, Gary G. Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Juvenile Defenders and Donna P. Chirco for Petitioner.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsels, for Real Party in Interest Orange County Social Services Agency.

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Tracy L., mother of Patricia, Alanis, and Jose, petitions for relief from the orders of the juvenile court refusing to offer her reunification services and referring her children to a hearing for the selection of a permanent plan. Tracy contends the refusal of reunification services was erroneously based on a finding that her whereabouts were unknown because her whereabouts became known within a six-month period. We find no error and deny the petition.

FACTS

Patricia, twelve years old; Alanis, eight years old; and Jose, eight months old were left with their maternal aunt "while [the mother] dealt with divorcing the father and moving." The mother brought the children to the aunt's home on April 18, 2006. During the first month of her absence, the mother called every week, and on May 12 she came to visit and spend the night. She told the aunt she would return to pick up the children on June 20, 2006. The mother called on May 26 and June 9, explaining she had sold her home and was staying with friends, "but could not give the aunt any contact information." On July 5, 2006, the Orange County Social Services Agency (SSA) detained the children and placed them with the aunt.

The jurisdiction and disposition hearing was held on August 21, 2006. The father had contacted SSA to explain that he was in custody for immigration violations. The mother had been seen in Roseburg, Oregon, by a member of the family's former church. The aunt reported that the maternal grandmother had called to talk to the children, "and put the children on the phone with their mother without permission of the

aunt." The mother gave a telephone number to the children, but SSA was unable to contact the mother through that number. The court declared dependency, removed the children from parental custody, approved a reunification plan for the father, and denied reunification services to the mother.

Neither the social worker nor the children heard from the mother during the next five months, although she left sporadic messages for the aunt "without available contact information." On January 23 or 24, 2007, the mother left a voicemail message for the social worker because she had heard from the father about the upcoming six-month review hearing, which was set for February 5, 2007. The social worker spoke to the mother on January 25. The mother said she had received a letter from the juvenile court regarding her children in August 2006; the letter was postmarked July 2006. She requested an attorney and a case plan and said that she would do "whatever it takes" to reunite with her children.

The mother appeared in court with her attorney on February 5. By stipulation, the hearing was continued to February 20. The mother called the social worker on February 13, stating she had returned to Oregon but was moving back to California and planned to attend the hearing on February 20. The mother did not appear at the hearing, and her counsel asked for a contested hearing, which was set for March 7. The mother failed to appear at the continued hearing.

SSA recommended referring the children to a permanent plan selection hearing. (Welf. & Inst. Code, § 366.26.)[1] The social worker wanted to keep them together: "The children have always lived together and have never been separated from one another." The two girls said they did not want to return to their mother and wanted to be adopted by their aunt, and the aunt wanted to adopt them. SSA proposed findings

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[1] All statutory references are to the Welfare and Institutions Code.

by clear and convincing evidence that Jose was under the age of three when he was detained and Patricia and Alanis were members of his sibling group, the mother failed to make progress in a court-ordered treatment plan, and it was in the best interests of the children to proceed to a permanent plan selection hearing. The mother's counsel submitted on SSA's reports and proposed orders and findings, and waived argument.

The juvenile court made "the orders and findings pursuant to the proposed orders and findings which have been submitted to the court" and found "that the time frame for reunification, which is six months, has expired." The court found it had "no evidence which would suggest that there's a substantial probability of return to the custody of the parents within the next six months," so it terminated reunification services to the father and set a permanent plan selection hearing pursuant to section 366.26.

DISCUSSION

The mother argues her whereabouts became known "within the six month period," and, accordingly, she should have been offered reunification services. Section 361.5, subdivision (b) states that "[r]eunification services need not be provided to a parent . . . described in this subdivision when the court finds, by clear and convincing evidence, . . . (1) [t]hat the whereabouts of the parent . . . is unknown." If "the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision." (§ 361.5, subd. (d).) The mother apparently contends the six-month period began to run on the date of the jurisdiction hearing rather than the date of the detention hearing.

We need not address the mother's argument, however, because the juvenile court correctly relied on different statutory provisions to terminate reunification services and set a permanent plan selection hearing. Section 361.5, subdivision (a)(2) provides

that reunification services for a child under the age of three years at the time of removal from his or her parent shall be limited to a maximum of six months "from the date the child entered foster care." Subdivision (a)(3) gives the juvenile court discretion to limit reunification services to six months from entry into foster care for all members of a sibling group if one member was under the age of three years at the time of removal. At the six-month review hearing, the juvenile court may schedule a permanent plan selection hearing for all the members of such a sibling group if it "finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan," unless it finds there is "a substantial probability" that the children may be returned home within six months. (§ 366.21, subd. (e).)

The evidence supports the court's finding that Patricia, Alanis and Jose were members of a sibling group described in section 361.5, subdivision (a)(3) and that it was in their best interests to proceed to a permanent plan selection hearing. The children had never lived apart, they were placed together with a caregiver who wished to adopt them, the two girls did not want to return to their mother, and Jose had spent approximately half his life without seeing his mother. "[A] child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing . . . or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent . . . ." (§ 361.5, subd. (a)(3).) The jurisdiction hearing for these children was August 21, 2006; therefore, the court had the discretion to refuse to order reunification services to the parents after February 21, 2007. The order refusing reunification services was made on March 7, 2007 and was not an abuse of discretion.

DISPOSITION

The orders denying reunification services to the mother and referring the children to a permanent plan selection hearing were correct. The petition is denied.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.